

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**SHANDI CRAPPELL and  
RIC SZABO,  
Plaintiffs,**

**v.**

**MUNCY INDUSTRIES, LLC,  
d/b/a MUNCY MACHINE &  
TOOL CO., INC.,  
Defendant.**

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**No. 4:21-CV-00468**

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes Muncy Industries, LLC d/b/a Muncy Machine & Tool Co., Inc., by and through its undersigned counsel, Gregory A. Stapp, Esquire, hereby moves this Honorable Court, pursuant to Fed.R.Civ.P. 56, and Local Rule 56.1, for an Order granting Summary Judgment in their favor and against Plaintiff, Ric Szabo In support of their motion for Summary Judgment, Defendant avers as follows:

1. Shandi Crappell, originally named as a Plaintiff along with Ric Szabo has resolved her claims and they have been dismissed with prejudice.

2. Based upon the responses to discovery and the parties agreement to the material facts, Defendants believe that a Motion for Summary Judgment is appropriate at this time.

3. If Defendant was to file a Motion to Dismiss, it would likely be converted to a Motion for Summary Judgment given the necessity of relying on the evidence developed in this case. *See Fed.R.Civ.P. 12(d)*.

4. The complete factual grounds and arguments will be developed by Defendant in Defendant's Brief in Support which will be filed in accordance with Local Rule 7.5, within 14 days of this Motion, and all arguments contained therein are incorporated herein by reference.

#### **STATEMENT OF FACTS**

5. Muncy Industries, LLC has concurrently filed a Statement of Undisputed Material Facts, and it incorporates the same herein.

#### **STATEMENT OF QUESTIONS INVOLVED**

6. Whether Plaintiff, Ric Szabo claims under the Fair Labor Standards Act, 29 U.S.C.A. § 201 *et seq.* fail as a matter of law?

7. Whether Plaintiff, Ric Szabo claims under the Fair Labor Standards Act fail as a result of entering into a contract with Muncy Industries, LLC to work a fluctuating work week in accordance with the provisions of the Fair Labor Standards Act.

8. Whether Plaintiff, Ric Szabo's claims under the Pennsylvania Minimum Wage Act, 43 P.S. § 333.113 fail as a matter of law?

## **LEGAL STANDARD**

9. Defendant incorporated by reference the legal standards as set forth in their Brief in Support of this Motion for Summary Judgment.

10. Plaintiff Ric Szabo is unable to meet his burden of establishing his claim for overtime wages under the Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201 *et seq.* (FLSA) and Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.113 *et seq.*

11. Plaintiff Ric Szabo admitted to entering into a contract with Muncy Industries, LLC for a salary to work 40 or more hours per week.

12. Mr. Szabo agreed to the arrangement with Muncy Industries, LLC in which he would create the calibration program at Muncy Industries, LLC from scratch with the assistance of Muncy Industries, LLC and Mr. Jason Fetter.

13. Mr. Szabo has authenticated and agreed to the contract between the parties that was entered into on or about January 8, 2018.

14. Mr. Szabo has agreed that all the elements of the contract as identified in Szabo Deposition Exhibit Number 2 were met by the Defendant in accordance with the provisions of the Fair Labor Standards Act and the Pennsylvania Minimum Wage Act and the laws of the Commonwealth of Pennsylvania.

15. The parties agree that neither Mr. Szabo nor Muncy Industries, LLC could control or anticipate with a degree of certainty the number of hours the

employee was going to have to work from week to week when creating the Calibration Department at Muncy Industries.

16. The parties agree that the duties of Mr. Szabo necessitated significant variations in weekly hours of work both below and above the statutory weekly limit on non-overtime hours.

17. The parties were aware that Mr. Szabo would have to work fluctuating work week hours when the contract was agreed to for creation of the Calibration Department at Muncy Industries, LLC.

### **CONCLUSION**

15. For the forgoing reasons, and for the reasons to be set forth in Brief in Support filed by Defendant in accordance with Local Rule 7.5, this Honorable Court must dismiss Plaintiff Ric Szabo's Complaint in its entirety with prejudice as a matter of law.

Respectfully submitted,  
**STAPP LAW, LLC**

Date: September 30, 2022

By: /s/ Gregory A. Stapp  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2022, I electronically filed the foregoing **Defendant's Motion for Summary Judgment** with the Clerk of Court by using the CM/ECF filing system which will send notification of electronic copy to the following:

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